

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JUSTIN EDWARD LEWIS,

Plaintiff,

v.

CALEB BAIRD,

Defendants.

Case No. C19-5653-TLF

ORDER SETTING NEW BRIEFING  
SCHEDULE AND DIRECTING  
DEFENDANT TO PROVIDE RAND  
NOTICE

This matter comes before the Court on defendant Caleb Baird's motion to dismiss. Dkt. 24. Plaintiff is proceeding *pro se* and *in forma pauperis*, and has brought these claims against defendant under 42 U.S.C. § 1983. Plaintiff has not filed a response to defendant's motion to dismiss.

The Ninth Circuit Court of Appeals requires *pro se* prisoner-plaintiffs to be provided notice of what is required to oppose a motion to dismiss or motion for summary judgment. *Woods v. Carey*, 684 F.3d 934, 935, 940-41 (9th Cir. 2012). This notice "must be served concurrently with motions to dismiss and motions for summary judgment." *Id.* at 935. Defendant Clark County did not serve plaintiff with notice consistent with *Woods* and in accordance with the holdings in *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) and *Wyatt v. Terhune*, 315 F.3d 1108 (9th Cir. 2003).

Although plaintiff was provided with *Woods* notice in the Court's Order Directing Service (Dkt. 17), the United States Court of Appeals for the Ninth Circuit has mandated

1 that notice must be given at the time of filing of the motion. *Woods*, 684 F.3d at 940-41.  
2 Out of an abundance of caution, therefore, the Court finds that a new briefing schedule,  
3 to give plaintiff proper notice and allow for responsive briefing, in accordance with  
4 *Woods* is appropriate.

5 Accordingly, it is ORDERED:

6 (1) Defendant is directed to serve plaintiff with proper notice of what is  
7 required to oppose a motion to dismiss or motion for summary judgment pursuant to  
8 *Woods* and *Rand* by no later than May 11, 2020.

9 (2) Plaintiff may file a response opposing defendant's motion to dismiss (Dkt.  
10 24) no later than June 15, 2020.

11 (3) If plaintiff files a response, defendant may file a reply no later than June  
12 19, 2020.

13 (4) The Clerk shall send a copy of this Order to plaintiff and counsel for  
14 defendant.

15 (5) The Clerk is directed to re-note defendant's motion to dismiss (Dkt. 24) for  
16 consideration on June 19, 2020.

17 Dated this 22nd day of April, 2020.

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20 Theresa L. Fricke  
21 United States Magistrate Judge  
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